

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MATTHEW J. KING,

Plaintiff,

v.

AMY CALDERWOOD, et al.,

Defendants.

Case No. 2:13-cv-02080-GMN-PAL

ORDER

(Mtn for Contempt – Dkt. #54)
(Mtn to Extend Time – Dkt. #63)

This matter is before the Court on Plaintiff Matthew J. King’s Motion for Contempt (Dkt. #54) and Defendants’ Motion to Extend Time to Respond to Plaintiff’s Motion for Contempt (Dkt. #63). Plaintiff is a prisoner proceeding in this civil rights action *pro se* and *in forma pauperis*. These matters were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and LR 1-3 and 1-9. The Court has considered the Motions and related briefing.

Plaintiff’s Motion for Contempt (Dkt. #54) asks the Court to find Defendants in contempt for their failure to file a reply brief in support of the Motion for Summary Judgment (Dkt. #29). Defendants failed to timely oppose this motion.¹ Nevertheless, there is no legal basis to find Defendants in contempt because the challenged failure did not violate a procedural rule or court order.

The plain language of Local Rule 7-2, which addresses the briefing schedule for summary judgment motions, shows that filing a reply is optional:

The time for filing of a motion of summary judgment shall be governed by Federal Rules of Civil Procedure 56(b). A party opposing the [summary judgment] motion must file a response within twenty-one (21) days after the motion is served or a

¹ The Local Rules of this Court explain that a “failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion.” LR 7-2(d).

responsive pleading is due, whichever is later. *The movant may file a reply* within fourteen (14) days after the response is served.

LR 7-2(e) (emphasis added).

Plaintiff contends that the lack of a reply brief disobeyed the Court's Order (Dkt. #30), which stated that a moving party shall have "fourteen (14) days for a motion for summary judgment, after filing of the opposing points and authorities within which to file and serve reply points." *Id.* at 3. Plaintiff's Response (Dkt. #34) to Defendants' motion for summary judgment was filed on January 6, 2015, which set a reply deadline for January 23rd. Local Rule 7-2 permits, but does not require a party to file a reply brief. Similarly, the court's *Klinge* order permitted, but did not require a reply brief to be filed. When the Defendants did not file a reply within 14 days, the district judge considered the motion and opposition. *See* Order (Dkt. #58). As the non-moving party who filed an opposition to Defendants' summary judgment motion, Plaintiff was not prejudiced by the Defendants' decision to forgo a reply. In fact, filing a reply would have given the Defendants the last opportunity to persuade the district judge the case should be dismissed. No cause exists for the Court to make a finding of contempt and Plaintiff's Motion will be denied.


Defendants' Motion to Extend Time to Respond to Plaintiff's Motion for Contempt (Dkt. #63) is denied.

Accordingly,

IT IS ORDERED:

1. Plaintiff's Motion for Contempt (Dkt. #54) is **DENIED**.
2. Defendants' Motion to Extend Time to Respond to Plaintiff's Motion for Contempt (Dkt. #63) is **DENIED**.

Dated this 21st day of May, 2015.


 PEGGY A. LEEN
 UNITED STATES MAGISTRATE JUDGE